Supreme Court, U.S.
FILED

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No.

In The

Supreme Court of the United States

CHAGANTI & ASSOCIATES, P.C.,

Petitioner,

v.

THOMAS NOWOTNY AND ROGER VARDELEON,

Respondents

On Petition for a Writ of Certiorari

To the United States Court of Appeals

For the Eighth Circuit

Petition for a Writ of Certiorari

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QUESTIONS PRESENTED

1. Does a state court complaint transform and become removable without any change in the complaint after a defendant discovers a hidden federal claim?

2. Whether the mere characterization of a claim, without any change in the language of the complaint, make the state court complaint removable under federal question jurisdiction.

3. Under the "artful pleading" corollary to the "well-pleaded complaint" rule, is a plaintiff under a duty to unmask any hidden federal question in his state court complaint in order to enable removal?

4. Whether the Court of Appeals was correct in using a "clearly erroneous" standard of review instead of a "de novo" review where the district court did not issue findings and conclusions pursuant to Fed. R. Civ. P. 52.

CORPORATE DISCLOSURE STATEMENT

Petitioner Chaganti & Associates, P.C. is a Missouri corporation with principal place of business in Missouri. It has no parent and no publicly held entity owns 10% of its corporate stock.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

CORPORATE DISCLOSURE STATEMENT ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

PETITION FOR A WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT 2

SUMMARY OF THE ARGUMENT 4

ARGUMENT 6

I. Contrary to the long-standing jurisprudence of this Court, the Eighth Circuit used a subjective test for removability of a federal question case. 6

II. The Eighth Circuit misstated the artful pleading corollary to the "well pleaded complaint" rule 11

III. The Eighth Circuit departed from the precedent requiring an independent review when a lower court did not comply with Fed. R. Civ. P. 52(a). 15

IV. CONCLUSION 16

TABLE OF AUTHORITIES

Cases

Akin v. *Ashland Chem. Co.*, 156 F.3d 1030, 1035 n.2 (10th Cir. 1998).....15
Aldinger v. *Howard*, 427 U.S. 1, 7 (1976).....8
Alpha Shoe Serv. v. *Fleming Companies, Inc.*, 849 F.2d 352, 354 (8th Cir. 1988).....12
Anderson v. *American Airlines*, 2 F.3d 590, 595 (5th Cir. 1993).....5, 9
Buchanan v. *Delaware Valley News*, 571 F.Supp. 868, 871-72 (E.D. Pa. 1983).....13
Cantrell v. *Great Republic Ins. Co.*, 873 F.2d 1249, 1256 (9th Cir. 1989).....5, 9, 13
Caterpillar, Inc. v. *Williams*, 482 U.S. 386 (1987).....7, 8
City of Chicago v. *International College of Surgeons*, 522 U.S. 156, 163 (1997).....5
Cohen v. *Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546-47 (1949).....1
Defino v. *Civic Center Corp.*, 718 S.W.2d 505, 510 (Mo. App. 1986).....12
Fed. R. Civ. P. 8(a).....14
Federated Department Stores, Inc. v. *Moitie*, 452 U.S. 394, 397 at n.2 (1981).....4, 8, 11, 13
Golke v. *Lee Lumber & Bldg. Materials Corp.*, 671 F. Supp. 568, 571 (N.D. Ill. 1987).....14, 15
Gore v. *Trans-World Airlines*, 210 F.3d 944, 948 (8th Cir. 2000).....10
Grable & Sons Metal Prods. v. *Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005).....5, 12
Grubbs v. *General Elec. Credit Corp.*, 405 U.S. 699, 702 (1972).....13
Gully v. *First Nat'l Bank in Meridian*, 299 U.S. 109, 112-13 (1936).....5, 7
In Re Brand Name Prescription Drugs Antitrust Litig., 123 F.3d 599, 611 (7th Cir. 1997).....12
In re NASDAQ Market Makers Antitrust Litig., 929 F.Supp. 174 (S.D.N.Y. 1996).....13

Kaneshiro v. *N. Am. Co. for Life and Health Ins.*, 496 F. Supp. 452, 455–56, 462 (D. Haw. 1980) 13
Kuhn v. *Brunswick Corp.*, 871 F. Supp. 1444, 1446 (N.D. Ga. 1994) 13
Machinists v. *Central Airlines, Inc.*, 372 U.S. 682, 693, n.17 (1963) 12
Merrell Dow Pharmaceuticals v. *Thompson*, 478 U.S. 804 (1986) 8
Okla. Tax Comm'n v. *Graham*, 489 U.S. 838, 840 (1989) 10
Pryzbowski v. U.S. Healthcare, Inc., 245 F.3d 266, 271 (3d Cir. 2001) 5, 9, 14
Richman v. *Zimmer, Inc.*, 644 F. Supp. 540, 541- 42 (S.D. Fla. 1986) 13
Rivet v. *Regions Bank of La.*, 522 U.S. 470 (1998) 10, 11
Salve Regina College v. *Russell*, 499 U.S. 225, 233 (1991) 15
Scott v. *Greiner*, 858 F. Supp. 607, 610 & n.2 (S.D. W. Va. 1994) 14
Smith v. *Kansas City Title & Trust Co.*, 255 U.S. 180 (1921) 5
Syngenta Crop Prot., Inc. v. *Henson*, 537 U.S. 28, 32 (2002) 4

Statutes

28 U.S.C. § 1254(1) 1
28 U.S.C. § 1331 ..... 5, 7, 11
28 U.S.C. § 1441 5
28 U.S.C. § 1441(b) 6
28 U.S.C. § 1446(b) 1, 4, 7, 13
28 U.S.C. § 1447(c) 4
RSMo § 416.141 (1994) 2, 12

Rules

Fed. R. Civ. P. 12(e) 15
Fed. R. Civ. P. 52(a) 2, 6, 15

Treatises

13A Wright, Miller & Cooper, Jurisdiction 2d §§ 3566 7
Moore's Federal Practice, §107.30[3](a)(ii)(A) (3d Ed. 2005) 13

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Chaganti & Associates, P.C., hereby respectfully petitions for a writ of certiorari to review the judgment in this case by the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals for the Eighth Circuit (App., *infra*, at 1a-14a) is reported at 470 F.3d 1215. The orders of the District Court for the Eastern District of Missouri (App., at 17a-23a) are unreported.

JURISDICTION

Subject matter jurisdiction in the district court is an issue in this matter because the defendants removed the case more than 30 days after they were served with the state court complaint. Petitioner filed a timely motion for remand, which the District Court denied. The District Court's subsequent order dated December 1, 2004, App., at 18a-20a, conclude that the parties had "settled," from which order Petitioner filed a timely notice of appeal on December 9, 2004. The jurisdiction of the court of appeals was predicated on 28 U.S.C. §1291 pursuant to *Cohen* v. *Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546-47 (1949). The decision of the Eighth Circuit Court of Appeals is dated December 5, 2006. App., *infra*, at 1a-14a. A timely filed petition for rehearing was denied on January 16, 2007. App., *infra*, at 24a. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1446(b) provides in relevant part:

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, * * * of a copy of * * * other paper from which it may first be ascertained that the case is one which is or has become removable * * *.

* * *

Section 416.141 of the Revised Statutes of Missouri (RSMo)(1994) provides:

Sections 416.011 to 416.161 shall be construed in harmony with ruling judicial interpretations of comparable federal antitrust statutes.

* * *

Fed. R. Civ. P. 52(a) provides, in part:

In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58 * * *.

STATEMENT

Chaganti & Associates, P.C., a group of psychiatrists, sued defendants Dr. Nowotny and Dr. Vardeleon for tortious interference with its business relations with St. Anthony's Medical Center ("the hospital") and for "unlawful restraint of trade." Petitioner alleged that on October 7, 2002 it entered into an agreement to put to rest certain disputes between its employees and the hospital. Several months later, Dr. Nowotny and Dr. Vardeleon reopened the issues that the hospital settled with Petitioner pursuant to the October 7, 2002 agreement. Forty five days after they were served, defendants claimed that they for the first time realized that the antitrust law claims were federal in nature and removed the case to the federal District Court. The District Court denied Petitioner's motion to remand.

In August 2004, defendants Nowotny and Vardeleon filed a motion for summary judgment, stating that the October 7, 2002 agreement was not effective or that they were unaware of the agreement and thus could not have tortiously interfered to defeat the agreement. When Petitioner sought to take depositions of the hospital staff and obtain documents from their attorney's computers, defendants initiated settlement discussions, which took place over several weeks without any final result.

In October 2004, Mr. Winthrop Reed, counsel for defendants, claimed that the parties had reached a

settlement *under the terms laid out by the nonparty hospital* whereby Petitioner's employee, Dr. Chaganti would resign from the hospital, that Petitioner would dismiss the lawsuit and another lawsuit Petitioner filed in the City of St. Louis, and that Petitioner would pay its own costs and attorneys' fees. Petitioner disagreed that there was "settlement" and stated that they were merely discussions between counsels.

On December 1, 2004, without any evidentiary hearing that Petitioner demanded, the District Court summarily affirmed the defendants' version of facts and ordered Petitioner to execute unspecified "documents" necessary to effectuate settlement within ten days or face sanctions. App., *infra*, at 18a. Petitioner filed a timely notice of appeal from that decision.

Defendants filed two motions for contempt stating that the Petitioner refused to sign the "documents," which refusal was in contempt of court. Petitioner responded that it could not comply with the order because executing the documents would render the appeal moot. On March 1, 2004, the court of appeals allowed the appeal to proceed. App., *infra*, at 17a.

On April 14, 2005, without the benefit of an evidentiary hearing or jury trial, the District Court entered an order that Petitioner was in contempt pursuant to its December 1, 2004 order and imposed a fine of $500 per day "from the date of this order", and served the order on Petitioner the following day. App., *infra*, at 18a.

Petitioner filed a writ of mandate and for stay with the Court of Appeals for the Eighth Circuit, pursuant to which the Court of Appeals stayed the order of contempt. App., *infra*, at 16a.

After consolidating the petition for writ with the appeal on the merits, *id.*, the court of appeals affirmed the District Court's denial of the motion to remand, applied a deferential "clearly erroneous" standard of review to affirm the District Court's finding that there was settlement, App., *infra*, at 8a, and ruled that the District Court had the power

to hold a party in contempt for not taking actions that would render a pending appeal pending, but vacated the monetary sanction and remanded the matter to the District Court to determine whether the contempt finding was coercive or remedial in nature.

On or about March 2, 2007, Petitioner filed for a Writ of Mandamus seeking a reversal of the District Court's holding of the Petitioner in contempt for appealing its decision. That petition is currently pending in this Court as No. 06-1208.

This petition for certiorari follows.

SUMMARY OF THE ARGUMENT

In *Federated Department Stores, Inc.* v. *Moitie*, 452 U.S. 394, 397 at n.2 (1981), this Court stated that in an appropriate case "the removal court will seek to determine whether the real nature of the claim is federal, regardless of plaintiff's characterization". So ruling, this Court reaffirmed the long-standing rule that did not give weight to the characterization of a plaintiff or of a defendant. The Eighth Circuit, on the other hand, held that a defendant's belief or a plaintiff's characterization determined whether a complaint contained a federal question.

Though it is undisputed that the defendants removed the case untimely which makes remand mandatory, see 28 U.S.C. § 1447(c)[1], the Eighth Circuit ruled that the thirty day period for removal under 28 U.S.C. § 1446(b) did not start until the defendants discovered the federal claim in an unamended state court complaint, which the court below stated was not removable as filed.

Under 28 U.S.C. § 1446(b), in order to effect removal, a federal right must be an essential element of the

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[1] See *Syngenta Crop Prot., Inc.* v. *Henson*, 537 U.S. 28, 32 (2002)(stating that the strict policy against removal and for remand protects the sovereignty of state governments and state judicial power).

plaintiff's claim; "the controversy must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal." *Gully* v. *First Nat'l Bank in Meridian*, 299 U.S. 109, 112-13 (1936). Federal question jurisdiction need not be founded upon a "cause of action created by federal law," and may exist over a state law claim that depends on the construction of a federal statute where "a state-law claim necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." *Grable & Sons Metal Prods.* v. *Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005).

According to *Grable*, original (and thus removal[2]) jurisdiction pursuant to 28 U.S.C. §1331 would have been present in the complaint as filed even if it contained only a state-law antitrust action because under Missouri law, a federal question would be a necessary and disputed ingredient. See also, *Smith* v. *Kansas City Title & Trust Co.*, 255 U.S. 180 (1921).

The Eighth Circuit's holding is also in conflict with other courts of appeals and district courts, which held consistently with this Court that a claim that required an interpretation or application of a federal statute was removable. See, *e.g.*, *Anderson* v. *American Airlines*, 2 F.3d 590, 595 (5th Cir. 1993); *Cantrell* v. *Great Republic Ins. Co.*, 873 F.2d 1249, 1256 (9th Cir. 1989); *Pryzbowski v. U.S. Healthcare, Inc.*, 245 F.3d 266, 271 (3d Cir. 2001).

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[2] It is well understood that the conditions for original federal question jurisdiction and removal based on federal question jurisdiction are the same, and therefore the analysis under 28 U.S.C. § 1331 applies to removal jurisdiction. See *City of Chicago* v. *International College of Surgeons*, 522 U.S. 156, 163 (1997)(stating that 28 U.S.C. § 1441 incorporates the well-pleaded complaint rule in federal question cases.)

On a separate issue, the Eighth Circuit applied a deferential "clearly erroneous" standard of review when a the District Court entered a minute order without findings of facts under Fed. R. Civ. P. 52(a). Deciding that the parties had settled the case based on mere oral discussions, the District Court did not grant Petitioner's motion for an evidentiary hearing. The Court of Appeals ruled that the oral argument of counsel sufficed, engaged in fact finding, and concluded that *its own rendition of facts* was not "clearly erroneous." Certiorari is warranted to correct the wrong standard of review in the absence of fact finding by the trial court.

ARGUMENT

I. Contrary to the long-standing jurisprudence of this Court, the Eighth Circuit used a subjective test for removability of a federal question case.

A. Removal of federal question cases

An action filed in a state court may be removed to a federal district court within 30 days of service of complaint if the action is one over which the federal district court would have original jurisdiction. 28 U.S.C. § 1441(b). Under 28 U.S.C. § 1331 federal district courts may exercise "original jurisdiction" over "all civil actions arising under the Constitution, laws, or treaties of the United States." For the purposes of section 1331, a case "aris[es] under" federal law if "a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." *Franchise Tax Bd. of Cal.* v. *Construction Laborers Vacation Trust for Southern Cal.*, 463 U.S. 1, 27-28 (1983).

Under the well-pleaded complaint rule, a plaintiff has the right to choose the forum for the action. The plaintiff may assert state causes of action only and thus forego causes of action arising under federal laws by drafting his

complaint accordingly, or he or she may include federal causes of action, thereby leaving the action vulnerable to removal by the defendant. See, e.g., 13A Wright, Miller & Cooper, Jurisdiction 2d §§ 3566(stating that under a corollary of the well-pleaded complaint rule the party who brings a suit is the 'master of his claim' and as such may choose to forego a federal claim and restrict his suit to state law claims. If the plaintiff so decides, his case generally cannot be removed.)

In order to remove a state court case to a federal court under federal question jurisdiction, a federal right must be an essential element of the plaintiff's claim; "the controversy must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal." *Gully* v. *First Nat'l Bank in Meridian*, 299 U.S. 109, 112-13 (1936). Exceptions to the rule that a federal claim must be explicitly stated on the face of a complaint include the doctrine of complete preemption, see *Caterpillar Inc.* v. *Williams*, 482 U.S. 386, 393 (1987), and the so-called "artful pleading", where a complaint conceals the true federal nature of a claim. *Id.*, at 397 (stating that the "artful pleading" doctrine cannot be invoked to justify removal on the basis of facts not alleged in the complaint").

If a federal claim is present in the initial pleading, then the case must be removed within 30 days of the service of the complaint. 28 U.S.C. § 1446(b), ¶1. On the other hand, if an initial pleading is not removable, then an action may be removed within 30 days of the receipt by a defendant of "a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable". 28 U.S.C. § 1446(b), ¶2. The second paragraph of 28 U.S.C. § 1446(b) applies only if the initial pleading is not removable as filed.

Where a state court complaint did not state a federal question on its face, removal under 28 U.S.C. § 1331 has always been governed by an objective test. These include cases involving a "substantial federal question," see

Merrell Dow Pharmaceuticals v. *Thompson*, 478 U.S. 804 (1986), those with "sufficient federal character", see *Federated Department Stores, Inc.* v. *Moitie*, 452 U.S. 394, 397 at n.2 (1981), and where the state court complaint makes a "colorable federal claim", see *Aldinger* v. *Howard*, 427 U.S. 1, 7 (1976) ("[W]here federal jurisdiction is properly based on a colorable federal claim, the court has the right to decide all the questions in the case * * *.")

B. The Eighth Circuit confused the question of "arising under" as applied to 28 U.S.C. § 1331

In this case, defendants do not dispute that the removal papers were filed more than thirty days after the receipt of a copy of the plaintiff's complaint. Defendants argued and the Eighth Circuit agreed that the initial pleading could be interpreted as having only a state law claim and only a federal law claim without any change in the language.

According to the Eighth Circuit, where a state court complaint did not explicitly disclose the grounds for removability, a defendant's time for removal started when he discovered a federal question. This is theoretically wrong because it reverses the precept that a plaintiff is the master of the claim[3], and makes a defendant's subjective

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[3] The Eighth Circuit held contrary to this Court's ruling that the well-pleaded complaint rule is to protect a plaintiff from a defendant who would read a federal claim in a state court action. See *Caterpillar, Inc.* v. *Williams*, 482 U.S. 386 (1987), where this Court stated:

> [T]he paramount policies embodied in the well-pleaded complaint rule -- that the plaintiff is the master of the complaint, that a federal question must appear on the face of the complaint, and that the plaintiff may, by eschewing claims based on federal law, choose to have the cause heard in state court....[A] defendant cannot, merely by injecting a federal question into an action that asserts what is plainly a state-law claim, transform the action into one arising under federal law, thereby

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belief the key in deciding the existence of a federal question.

Conversely, according to the Fifth Circuit, if a state law claim required an interpretation of a federal statute, it could be removed. See *Anderson* v. *American Airlines*, 2 F.3d 590, 595 (5th Cir. 1993). Likewise, in *Cantrell* v. *Great Republic Ins. Co.*, 873 F.2d 1249, 1256 (9th Cir. 1989) the Ninth Circuit held that an inartfully pleaded complaint may provide sufficient notice for removal. And in *Pryzbowski v. U.S. Healthcare, Inc.*, 245 F.3d 266, 271 (3d Cir. 2001), the Third Circuit upheld removal stating, "any complaint that comes within the scope of [a] federal cause of action necessarily "arises under federal law * * *."

The Eighth Circuit is logically in error because either the case was removable as filed or it was not removable even at a later date *because the complaint remained unchanged.* Contrary to the well understood principles of federal question jurisdiction cases, the Eighth Circuit inaugurated a new area of removal jurisprudence by holding that a mere characterization of plaintiff could make an otherwise unremovable case removable. In other words, the Eighth Circuit held that a state law issue could become federal question not by the substance of the applicable statutes but by the mere characterization of a party.

Plaintiff argued that such reasoning would lead to doctrinal chaos because a plaintiff might subsequently confess that he misspoke and retract the characterization, or recharacterize the complaint as having unremovable claims. The Eighth Circuit did not answer the question but implicitly held one of the parties could arbitrarily[4] cast the

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selecting the forum in which the claim shall be litigated. If a defendant could do so, the plaintiff would be master of nothing.

482 U.S. at 398-99.

[4] Curiously, the same defendants later argued in the federal court that the state court complaint contained *only* federal

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complaint as having state law claims or federal law claims without regard to the substance of the allegations therein.

Such doctrinal confusion creates anarchy in removal jurisprudence. While this Court has repeatedly held that subject matter jurisdiction can neither be waived nor conceded by parties[5], the Eighth Circuit held the opposite.

The Eighth Circuit dodged the issue of *when* the state court complaint morphed into one containing a federal claim without any change in the language of the state court complaint. Answering this central question is critical because Paragraph 2 of 28 U.S.C. § 1446(b) permits the introduction of "other paper" only "if the case stated by the initial complaint is not removable as filed". The Eighth Circuit did not address this issue because it would have exposed the flaw in reasoning that a defendant's subjective belief was the determinant for federal-question removal. If, as the defendants contended, the state court complaint had only state law claims, it was not removable as filed.

A complaint cannot change its contents simply because a plaintiff *characterized* one way or another. See *Okla. Tax Comm'n* v. *Graham*, 489 U.S. 838, 840 (1989) (per curiam). No court or defendant agrees that hidden in a complaint are causes of action that were not specifically stated, if such recharacterization benefited a plaintiff. The Eighth Circuit's reasoning cannot be squared with the precedent of this Court over fundamental principles of federal jurisdiction, which departure warrants review.

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and *no* state law antitrust claims without any changes in the pleadings, and the Eighth Circuit ignored this contradiction.

[5] See, *e.g.*, *Rivet v. Regions Bank of La.*, 522 U.S. 470, 475 (1998). In this regard, the Eighth Circuit conflicted with its own precedent. *Gore* v. *Trans-World Airlines*, 210 F.3d 944, 948 (8th Cir. 2000)(stating that a federal question does not exist when a defendant finds out of its existence; it is there or it is not.)

II. The Eighth Circuit misstated the artful pleading corollary to the "well pleaded complaint" rule

The Eighth Circuit acknowledged that the federal claim remained hidden in the state court complaint, but also stated, rather paradoxically, that the "artful pleading" doctrine did not apply to this case because a federal claim was not "necessary" to the case. See, App., *infra*, at 7a, where it stated:

> The artful pleading doctrine has no application in this case. A federal antitrust claim was not necessary to the claims alleged in C&A's petition. Unlike a state-law claim that is completely preempted by a federal statute such as ERISA, *see Rivet*, 522 U.S. at 475, a claim of "unlawful restraint of trade" may be pleaded under the laws of Missouri alone. *See* Mo. Rev. Stat. §416.031 (2000). Until C&A's response to the motion to transfer, the defendants had no grounds to assert that the petition necessarily involved a federal claim that permitted removal.

Thus, in the Eighth Circuit's view, the doctrines of "artful pleading" and "complete preemption" are synonymous,[6] but there is no such relationship between the two. But this is theoretically incorrect because preemption is not the *sole* method of finding that a claim is artfully pled. See, *e.g.*, *Federated Department Stores, Inc.* v. *Moitie*, 452 U.S. 394, 397 at n.2 (1981)(stating that artful pleading involves casting an "essentially federal law" as a state-law claim). Where federal law is "determinative of the merits of the claim," this Court has found jurisdiction under 28 U.S.C. § 1331. See *Machinists* v. *Central*

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[6] The statement of the Eighth Circuit, that *Rivet* was not about complete preemption, is wrong because the question in that that case was whether the defense of *res judicata* could trigger removability, and this Court held that it was not. See *Rivet* v. *Regions Bank of La.*, 522 U.S. 470 (1998).

Airlines, Inc., 372 U.S. 682, 693, n.17 (1963)(citation omitted). Recently, this Court reiterated this principle in *Grable & Sons Metal Prods.* v. *Darue Eng'g & Mfg.*, 545 U.S. 308 (2005), when it stated that removal would be proper if a complaint necessarily *implicated a federal issue.*

A. The Eighth Circuit conflicted with the Seventh Circuit in ruling that the case was not removable as filed despite reliance of Missouri antitrust statutes on federal jurisprudence.

Missouri antitrust statutes are construed in harmony with judicial interpretations of federal antitrust laws. See RSMo § 416.141 (1994); *Defino* v. *Civic Center Corp.*, 718 S.W.2d 505, 510 (Mo. App. 1986)(stating that the Missouri Antitrust Act closely parallels provisions of the Sherman Act). Thus, if a claim fails under federal antitrust law, it also fails under Missouri antitrust law. See *Alpha Shoe Serv.* v. *Fleming Companies, Inc.*, 849 F.2d 352, 354 (8th Cir. 1988) (per curiam).

If Missouri antitrust statutes are construed based on federal jurisprudence, it cannot be said that a defendant did not discern a cause of action implicating federal laws until Plaintiff restated the same in a paper. The Eighth Circuit held that the case was not removable as filed until Plaintiff restated in a paper that it brought the case under the federal antitrust laws.

The Eighth Circuit's opinion directly conflicts with that of the Seventh Circuit, which held that when an antitrust plaintiff brought a suit in a state court *under a state antitrust statute that contains substantive provisions similar to that of a federal antitrust statute*, a defendant could remove on the ground that the plaintiff was trying to bring a federal antitrust suit. See *In Re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 611 (7th Cir. 1997), where Judge Posner wrote:

> This surprising possibility gets a boost from *Federated Department Stores, Inc. v. Moitie.* [] [¶] [*Moitie*] was removed to federal district court,

> properly in the Court's judgment because the district court had found as a fact that the plaintiffs had attempted to avoid removal jurisdiction by 'artful[ly]' casting their 'essentially federal law claims' as state-law claims.

Id. (citing 452 U.S. 394, 397 at n.2 (1981)).

Many lower courts have used this rationale and upheld removal if timely made or remanded the case for untimely removal. See *e.g.*, *In re NASDAQ Market Makers Antitrust Litig.*, 929 F.Supp. 174 (S.D.N.Y. 1996)(finding that artful pleading doctrine supported removal of the case involving state antitrust laws but involving interstate activity); *Buchanan* v. *Delaware Valley News*, 571 F.Supp. 868, 871-72 (E.D. Pa. 1983) (action filed in state court purporting to be based on "Pennsylvania antitrust law" could be removed under the artful pleading exception), *Kaneshiro* v. *N. Am. Co. for Life and Health Ins.*, 496 F. Supp. 452, 455–56, 462 (D. Haw. 1980) (finding that the removal clock under 28 U.S.C. § 1446(b) starts when there is a "clue" as to removability); *Kuhn* v. *Brunswick Corp.*, 871 F. Supp. 1444, 1446 (N.D. Ga. 1994); *Richman v. Zimmer, Inc.*, 644 F. Supp. 540, 541- 42 (S.D. Fla. 1986). Accord, *Moore's Federal Practice*, §107.30[3](a)(ii)(A) (3d Ed. 2005).

Plaintiff's antitrust claims in the state court complaint as filed were "sufficiently federal", had a "substantial federal question," or they presented at least a "colorable federal claim." If not, removal at any time would have been improper. If there was no federal question without any amendment to the complaint, there is no federal subject matter jurisdiction even now. See *Grubbs* v. *General Elec. Credit Corp.*, 405 U.S. 699, 702 (1972). On the other hand, if without any change to the pleading language it had federal subject matter jurisdiction, then the complaint was removable as filed, and removal was untimely.

In *Cantrell* v. *Great Republic Ins. Co.*, 873 F.2d 1249, 1256 (9th Cir. 1989), the Ninth Circuit held that even if a complaint is "artfully pled" so as to hide the federal

character of a case from the face of the complaint, late removal defeats federal jurisdiction, necessitating remand. In *Pryzbowski v. U.S. Healthcare, Inc.*, 245 F.3d 266, 271 (3d Cir. 2001), the Third Circuit held upheld removal stating, "any complaint that comes within the scope of [a] federal cause of action necessarily "arises under federal law * * *."

In failing to acknowledge that a hidden federal question makes the complaint "artfully pled" and in ruling that the time for removing an artfully pled state court complaint did not start until a defendant understood a hidden federal cause of action, the Eighth Circuit has inaugurated new law of removal inconsistent with this Court's jurisprudence.

B. The holding below contradicts the doctrine that a plaintiff is the 'master of the complaint' by imposing the burden of identifying grounds for removability on the plaintiff.

If the plaintiff were the master of the complaint, just as a defendant cannot inject his own reading of the complaint, so also, a defendant cannot be permitted to wait until a plaintiff clarifies under which law the claims in the state court complaint arose. Fed. R. Civ. P. 8(a), which requires only a "short and plain statement of the claim" in a complaint, should not be read to impose the burden of identifying the grounds for removal in the complaint.

This decision thus also raises a question of whether a plaintiff has the duty to explicitly raise a federal question in order to enable its removal. Several courts have opined that the plaintiff being the master of the claim, and the burden of establishing being on the defendant, the defendant should determine removability where the initial pleading raises a possibility that the right to remove may exist. See, *e.g.*, *Scott* v. *Greiner*, 858 F. Supp. 607, 610 & n.2 (S.D. W. Va. 1994) (motion for more definite statement required where federal question jurisdiction cannot be ascertained from the complaint); *Golke* v. *Lee Lumber & Bldg. Materials Corp.*, 671 F. Supp. 568, 571 (N.D. Ill.

1987)(inartfully pleaded complaint provided sufficient notice to start time running for removal). But see, *Akin* v. *Ashland Chem. Co.*, 156 F.3d 1030, 1035 n.2 (10th Cir. 1998)(holding that there was no duty on the part of a defendant to investigate grounds for removal).

In ruling that the time for removal did not start until the defendant learned of a hidden federal question, the Eighth Circuit implicitly held that a defendant is not obligated to investigate the grounds for removal (via, for example, a motion under Fed. R. Civ. P. 12(e)) but can rely on a subsequent paper to discover "for the first time" that the facts of the complaint could be implicating a federal law. This makes the defendant the 'master of the complaint.'

III. The Eighth Circuit departed from the precedent requiring an independent review when a lower court did not comply with Fed. R. Civ. P. 52(a).

Fed. R. Civ. P. 52(a) requires a district court to "find the facts specially and state separately its conclusions of law thereon". In the absence of special findings of fact, there was no reason for the court of appeals to give extra deference applicable under the "clearly erroneous" standard to the District Court's decision. As this Court has stated, "Independent review [of a lower court's decision] does not admit of unreflective reliance on a lower court's inarticulable intuitions. Thus, an appropriately respectful application of *de novo* review should encourage a district court to explicate with care the basis for its legal conclusions." *Salve Regina College* v. *Russell*, 499 U.S. 225, 233 (1991).

Here, the District Court issued a minute order, from which the Court of Appeals deduced the intent of the District Court under a deferential "clearly erroneous" standard, which is not consistent with the rule requiring special findings of fact and separate conclusions of law. Where a district court did not explain its ruling and the reviewing court uses a deferential standard, the review

would be meaningless. Under the circumstances, in order to conduct an independent appellate review, the Eighth Circuit should have applied a *de novo* standard.

Reviewing the record *de novo* would have made a difference in the outcome because the record contains obvious contradictions by the defendants who claimed that they had orally "settled" the case with the Petitioner, but also reserved the right to continue to litigate if the Petitioner did not execute certain documents. The Defendants also introduced numerous conditions—all one-sided and in their favor—from which the District Court found that there was "settlement" without any special findings along with an explanation of the contradictions in the record. Nor did the District Court hold an evidentiary hearing to find the facts as Petitioner requested; instead it issued a minute order deeming the case "settled." On review, the Eighth Circuit applied the "clearly erroneous" standard, which departs from the holding of this Court that any appellate review be conducted *independently*.

IV. CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

Nos. 05-1101/05-2075

Chaganti & Associates, P.C.,
Appellant,
v.
Thomas Nowotny; Roger V. Vardeleon,
Appellees.

Appeals from the United States
District Court for the
Eastern District of Missouri

No. 05-2065

In re: Chaganti & Associates, P.C.,
Petitioner,
Petition for Writ of Mandamus

Submitted: September 29, 2006
Filed: December 5, 2006

Before RILEY and COLLOTON, Circuit Judges, and KYLE[1], District Judge.

COLLOTON, Circuit Judge.

Chaganti & Associates, P.C., ("C&A"), brought an action in Missouri state court alleging that the defendants,

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[1] The Honorable Richard H. Kyle, United States District Judge for the District of Minnesota, sitting by designation.

Thomas Nowotny and Roger Vardeleon, interfered with the corporation's economic advantage, conspired to injure its business, and restrained trade. Nowotny and Vardeleon removed the case to the United States District Court for the Eastern District of Missouri, and the district court denied C&A's motion for remand.

Roughly a year and a half later, the district court found that all parties had agreed to settle the case, and granted the defendants' motion to enforce settlement.

After C&A's principal, Dr. Suren Chaganti, refused to sign the settlement documents, the court held C&A in contempt of court. C&A appeals the district court's denial of remand, the grant of the defendants' motion to enforce settlement, and several other rulings. C&A also petitions for a writ of mandamus to vacate the court's contempt and sanctions order. A panel of this court consolidated these matters and granted a stay pending appeal of the district court's contempt and sanctions order. We now deny the petition for writ of mandamus and affirm all of the district court's orders, except for the order imposing sanctions for contempt of court.

I.

Chaganti and Associates, P.C., is a corporation owned entirely by Suren Chaganti ("Dr. Chaganti"), a psychiatrist. Dr. Chaganti maintained staff privileges at the St. Anthony's Medical Center in St. Louis, Missouri. While Dr. Chaganti was at St. Anthony's, the medical center's Behavioral Health Care Review Committee began an inquiry into his practice. Thomas Nowotny was chair of the Review Committee. Based on the results of the committee's inquiry, Roger Vardeleon, then president of the St. Anthony's medical staff, sent Dr. Chaganti a letter in March 2002. The letter stated that Dr. Chaganti's staff privileges could be revoked if he did not fulfill certain certification and educational requirements. Dr. Chaganti did not fulfill these requirements, and in June 2003, the St.

Anthony's Medical Executive Committee recommended that the medical center terminate Dr. Chaganti's staff privileges.

On February 20, 2003, several months before the Medical Executive Committee recommended that Dr. Chaganti's privileges be terminated, C&A filed a petition in St. Louis City Circuit Court alleging that Nowotny and Vardeleon had interfered with C&A's economic advantage, conspired to injure its business, and restrained trade. The petition did not indicate the state or federal laws on which the claims were based.

On March 28, 2003, Nowotny and Vardeleon filed a motion to transfer the case within the Missouri court system to St. Louis County. In C&A's response to this motion, filed on April 4, C&A alleged for the first time that Nowotny and Vardeleon had "violated antitrust laws of the United States." Based on this allegation, Nowotny and Vardeleon filed a notice of removal in the United States District Court for the Eastern District of Missouri on April 18, 2003. C&A then moved to remand the case to state court on the ground that removal was untimely, but the district court denied the motion.

After the case was removed to federal court, Winthrop Reed, an attorney for Nowotny and Vardeleon, began to discuss the possibility of settlement with C&A's attorney, Naren Chaganti ("Naren"). According to Reed's sworn declaration, on August 25, 2004, he and Naren entered into a settlement agreement on behalf of C&A, Nowtony, Vardeleon, and St. Anthony's Medical Center. According to Reed, the agreement had the following terms: Dr. Chaganti agreed to complete specified educational requirements, dismiss this case and another he had filed in state court, sign a mutual release, and execute a letter withdrawing his application for reappointment to the medical staff at St. Anthony's. After all parties executed the mutual release, the executed documents would be held

in escrow. The Medical Executive Committee then would be notified that the matter was settled and would conclude its investigation of Dr. Chaganti. Provided that the Committee closed its investigation and determined that it was not required to report Dr. Chaganti to the National Practitioners Data Bank, the executed documents would be released from escrow.

On August 27, 2004, the parties filed a joint motion with the district court requesting an extension of time on all dates. The motion advised the court that the parties had reached an "agreement in principle," and requested additional time to conclude settlement arrangements. In September 2004, Reed drafted the documents called for by the alleged agreement and gave them to Naren for review. According to Reed's declaration, Naren approved these documents and said that Dr. Chaganti would sign them. Reed avers that on October 1, Naren informed him that Dr. Chaganti had decided that he would not withdraw his application for reappointment to St. Anthony's, and thus would not sign the settlement documents.

After Dr. Chaganti declined to sign the settlement documents, Nowotny and Vardeleon filed a motion to enforce the alleged settlement. Reed attached a sworn declaration describing the course of settlement negotiations, and he also attached the unsigned settlement documents. Chaganti's response denied that any such agreement existed. On November 30, 2004, the court held a hearing on the motion to enforce settlement, during which the court questioned Reed and Naren about their negotiations. Naren acknowledged that he had discussed the possibility of settlement with Reed, but insisted that they had reached no agreement and that he had no authority to settle the case. The court also spoke briefly with Dr. Chaganti by telephone during the hearing. At the close of the hearing, the court ruled that Naren did have authority to enter into a settlement agreement and that he had done so.

Consequently, the court granted Nowotny and Vardeleon's motion to enforce settlement and ordered Dr. Chaganti to "execute the required documents necessary to effectuate the parties' settlement of this matter within ten (10) days." (J.A. at 336). The court also warned C&A that "[f]ailure to comply with this order may result in the imposition of sanctions." (*Id.*).

Dr. Chaganti never signed any of the settlement documents, and on April 14, 2005, the court granted the defendants' motion to hold C&A in contempt, sanctioning C&A five hundred dollars per day until Dr. Chaganti signed the settlement documents. On April 15, 2005, C&A filed a petition for writ of mandamus challenging this ruling, and on August 23, 2005, we stayed the ruling pending appeal.

II.

C&A appeals the district court's denial of its motion to remand the case to Missouri state court on the ground that removal to federal court was improper. We review *de novo* the district court's exercise of removal jurisdiction and denial of a motion to remand. *United States v. Todd*, 245 F.3d 691, 693 (8th Cir. 2001).

The federal removal statute provides that a civil defendant generally must file a notice of removal within thirty days of receiving the initial pleading setting forth the claim of relief. 28 U.S.C. § 1446(b). The statute also provides, however, that if the "case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant . . . of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." *Id.*

Under the "well-pleaded complaint rule," a case in which federal jurisdiction is based on a federal question ordinarily is not removable unless the "federal question is presented on the face of the plaintiff's properly pleaded

complaint." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). C&A's original petition was entitled "Petition for Interference in Business Advantage; Conspiracy to Injure a Business; Unlawful Restraint of Trade." (J.A. at 19-27). It made no reference to any federal statute and did not advance any claim that was necessarily based on federal law. The only legal citation in the petition referred to a business interference case decided by the Missouri Supreme Court under Missouri law. (*Id.* at 21, 24). The most natural reading of the petition was that it contained claims based on Missouri law. The petition did not include allegations from which the defendants reasonably should have ascertained that the case was removable.

C&A first asserted that it was advancing a federal claim on April 4, 2003, in its response to the defendants' motion to transfer. Unlike C&A's initial complaint, the response contained an explicit reference to "antitrust laws of the United States." At that point, it was clear that the petition raised a federal claim, and the thirty-day period for removal commenced at that time.

C&A contends that under the "artful pleading doctrine," the case was removable when C&A filed its petition in February. The artful pleading doctrine, a corollary to the well-pleaded complaint rule, allows a defendant to remove a case to federal court when the plaintiff has attempted to defeat removal by failing to plead a necessary federal question. *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 475 (1998). "[C]ourts will not permit plaintiff to use artful pleading to close off defendant's right to a federal forum," *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 397 n.2 (1981) (internal quotation omitted), and the doctrine of artful pleading is designed to protect the right of defendants to have federal claims against them tried in federal court.

The artful pleading doctrine has no application in this case. A federal antitrust claim was not necessary to the

claims alleged in C&A's petition. Unlike a state-law claim that is completely preempted by a federal statute such as ERISA, *see Rivet*, 522 U.S. at 475, a claim of "unlawful restraint of trade" may be pleaded under the laws of Missouri alone. *See* Mo. Rev. Stat. § 416.031 (2000). Until C&A's response to the motion to transfer, the defendants had no grounds to assert that the petition necessarily involved a federal claim that permitted removal. Nowotny and Vardeleon filed their notice of removal within thirty days of the pleading that first asserted a federal antitrust claim, so the removal was timely, and the district court properly denied C&A's motion to remand.

III.

C&A also challenges the district court's order enforcing a settlement agreement between the parties. We review the court's finding that a settlement existed for clear error. *Enterprise Rent-a-Car Co. v. Rent-a-Wreck of Am., Inc.*, 181 F.3d 906, 909 (8th Cir. 1999).

Basic principles of contract formation govern the existence and enforcement of the alleged settlement, *see In re Airline Ticket Comm'n Antitrust Litig.*, 268 F.3d 619, 623 (8th Cir. 2001); *Sheng v. Starkey Labs.*, 53 F.3d 192, 194 (8th Cir. 1995), and the parties agree that Missouri law applies in this case. Under Missouri law, a valid settlement agreement need not be in writing. Unless the subject matter of the settlement is governed by the statute of frauds, a court may enforce an oral settlement agreement that contemplates the execution of documents at a later time. *Byrd v. Liesman*, 825 S.W.2d 38, 39 (Mo. Ct. App. 1992).

The essential elements of a valid settlement agreement are the involvement of parties who are competent to contract, a proper subject matter, legal consideration, mutuality of obligation, and mutuality of agreement. *L.B. v. State Comm. Of Psychologists*, 912 S.W.2d 611, 617 (Mo. Ct. App. 1995). There is no dispute that the alleged

settlement was made by parties competent to contract, and the subject matter is proper.

Consideration exists when there is a detriment to the promisee or a benefit to the promisor, *Citibank (South Dakota), N.A. v. Wilson*, 160 S.W.3d 810, 813 (Mo. Ct. App. 2005), and mutuality of obligation exists whenever there is consideration. *State ex rel. Vincent v. Schneider*, 194 S.W.3d 853, 859 (Mo. 2006). The district court found that the agreement provided a benefit to C&A. Under the terms of the agreement, the St. Anthony's Medical Executive Committee would conclude its investigation of Dr. Chaganti, St. Anthony's would not report Dr. Chaganti's investigation or withdrawal to the National Practitioners Data Bank, and Nowotny, Vardeleon, and St. Anthony's would release all potential claims they had against C&A. The district court's finding that these provisions constituted consideration to C&A is not clearly erroneous, and as a consequence, there was also mutuality of obligation.

Mutuality of agreement requires "a mutuality of assent by the parties to the terms of the contract," i.e., a "meeting of the minds." *L.B.*, 912 S.W.2d at 617. A court should determine whether such a meeting of the minds took place by "looking to the intentions of the parties as expressed or manifested in their words or acts." *Id.*

Here, the district court specifically found that there had been a meeting of the minds concerning the terms of the settlement.

We conclude that the district court's finding was not clearly erroneous. Reed and Naren undertook protracted negotiations during the summer of 2004, and Reed sent Naren a written proposed settlement on August 24, 2004. The next day, Reed and Naren met to discuss this proposal, and Reed avers that Naren explicitly agreed to the settlement agreement with the stated terms in a telephone conversation that followed the meeting. Shortly thereafter,

with Naren's approval, Reed filed a joint motion with the district court stating that the parties had reached an agreement in principle. This pleading was followed by exchanges of correspondence and efforts by Reed to secure signed settlement agreements from Naren and Dr. Chaganti.

The court questioned Reed and Naren during the settlement hearing about their discussions. Naren claimed that no settlement agreement was reached and that the exchanges in August and September were simply ongoing negotiations. Reed countered that Naren explicitly agreed to the settlement agreement with the stated terms on August 25 and confirmed that agreement multiple times over the course of the following month.

The district court then made a credibility finding, believing Reed's testimony that Naren had agreed to the settlement terms over Naren's insistence that he had not.

"Credibility determinations are within the exclusive domain of the district court and are virtually unreviewable on appeal." *Enterprise Rent-a-Car*, 181 F.3d at 910 (internal quotation omitted). Given our deference to the district court's assessment of the evidence and the circumstantial evidence supporting it, we conclude that the court's finding of a settlement agreement was not clearly erroneous.

C&A argues that even if its attorney, Naren, did enter into a settlement agreement, he had no authority to do so, and that the agreement thus does not bind the corporation. Under Missouri law, an attorney cannot enter into a settlement agreement that binds a client unless that client gives the attorney authority to do so. *McDowell v. Kearns*, 758 S.W.2d 481, 482-83 (Mo. Ct. App. 1988). A court, however, will presume that an attorney has the necessary authority if the attorney's statements or conduct imply the authority to settle. *Id.* The client then has the burden of proving that the attorney acted without authority. *Id.*

Here, the district court found, without clear error, that Naren agreed to settle the lawsuit. C&A has not presented compelling evidence to overcome the presumption under Missouri law that Naren's acts demonstrate his authority to bind his client. The district court, moreover, examined Naren and declined to credit his assertion that he lacked the necessary authority. Accordingly, we hold that the court's finding that Naren had authority to enter into the settlement is not clearly erroneous.

C&A also mounts a procedural challenge to the district court's ruling, asserting that the motion to enforce the settlement agreement was granted without an adequate evidentiary hearing. C&A argues that because only the lawyers, and not the parties, were present at the hearing, it was unable to present its evidence that no settlement agreement was reached.

"As a general rule, an evidentiary hearing should be held when there is a substantial factual dispute over the existence or terms of a settlement." *Stewart v. M.D.F., Inc.*, 83 F.3d 247, 251 (8th Cir. 1996). A court, however, need only hear so much evidence as is necessary for it to resolve the "essential issues of fact" concerning the settlement. *Id.* When deciding whether to hold a hearing, a court may also consider the need to conserve judicial resources and "the unseemliness of holding, in effect, a mini-trial to resolve a dispute between attorneys arising from their oral settlement talks." *Id.* at 252. Accordingly, when "the parties' counsel [are] the sole witnesses to their own conversations," the court may properly determine whether a settlement exists by relying exclusively on the representations of counsel. *Id.*

In this case, there was a factual dispute over the existence of the settlement, and the district court properly held a hearing on November 30, 2004. The essential issues of fact were whether Naren, C&A's attorney, had agreed to settle the case, and, if so, whether Naren had the authority to enter into a settlement agreement. The first issue

depended principally on what occurred during the settlement negotiations between the lawyers. Reed and Naren described those discussions at length during the hearing.

The court properly resolved the dispute about the existence of an agreement based on its evaluation of the representations of counsel. *Stewart*, 83 F.3d at 252. As to the second issue, the court's finding that Naren agreed to settle the case created a presumption that he had authority to do so. *McDowell*, 758 S.W.2d at 482-83. C&A bore the "heavy burden" to rebut this presumption, *Greater Kansas City Laborers Pension Fund v. Paramount Indus.*, 829 F.2d 644, 646 (8th Cir. 1987), and it had notice of the hearing and an opportunity to present evidence. Dr. Chaganti could have appeared in person if he so desired. Although it had no obligation to do so, the district court even took the initiative to contact Dr. Chaganti by telephone during the hearing so that he could address the disputed issues. Thus, C&A had a fair opportunity to make its case to the court concerning the essential issues of fact – whether Naren made an agreement and whether he had authority to do so – and we perceive no procedural flaw in the district court's handling of the matter.

IV.

C&A also challenges the district court's order holding the corporation in civil contempt and imposing sanctions. The district court retained jurisdiction to enforce its judgment notwithstanding C&A's appeal on the merits, *see In re Grand Jury Subpoenas Duces Tecum*, 85 F.3d 372, 375-76 (8th Cir. 1996), so we reject the contention that the district court lacked jurisdiction to enter the contempt order. The district court denied C&A's motion to stay the order enforcing the settlement, and absent a stay from an appellate court, the district court was within its authority to enforce the order. On the merits, we review a district court's imposition of a civil contempt order and assessment

of monetary sanctions for abuse of discretion. *Warnock v. Archer*, 443 F.3d 954, 955 (8th Cir. 2006).

C&A contends that it did not receive prior notice that failure to comply with the court's order enforcing the settlement may result in contempt sanctions. We are not persuaded by this complaint, because the court specifically advised C&A that it would be subject to sanctions if it failed to comply. (J.A. at 336). C&A also argues that the terms of the order enforcing the settlement were too vague to justify holding C&A in contempt for failing to comply. A contempt order must be based on a party's failure to comply with a "clear and specific" underlying order. *Int'l Bhd. of Elec. Workers, Local Union No. 545 v. Hope Elec. Corp.*, 293 F.3d 409, 418 (8th Cir. 2002). In this case, the underlying order to enforce settlement provided that "plaintiff shall execute the required documents necessary to effectuate the parties' settlement of this matter within ten (10) days from the date of this order. Failure to comply with this order may result in the imposition of sanctions." (J.A. at 336). Although the order did not specifically identify the "required documents," the meaning should have been clear to C&A based on previous pleadings in the case and the discussions at the hearing concerning enforcement of the settlement. Nowotny and Vardeleon attached the proposed settlement documents to their motion to enforce settlement, which was granted by the district court. Reed gave Naren copies of these documents months prior to the hearing on November 30, 2004. During the course of the hearing, Reed briefly summarized the terms of the settlement, and mentioned each of the attached documents. Naren also referred to the attached documents during the hearing. Thus, when the court granted the motion to enforce settlement and ordered C&A to execute the "necessary" settlement documents, there was no reasonable basis for C&A or Dr. Chaganti to doubt what documents had to be signed. We thus conclude that the

district court's settlement order had the clarity and specificity required to be enforced by contempt sanctions.[2]

On this record, however, we are unable to uphold the district court's imposition of monetary sanctions. A district court may impose civil contempt sanctions for one of two purposes: to compensate parties aggrieved by contumacious conduct or to coerce compliance with the court's orders. *United States v. United Mine Workers*, 330 U.S. 258, 303 (1947). When a sanction is designed to coerce a recalcitrant party to comply, the sanction should be payable to the court, rather than to the opposing party. *Hicks on Behalf of Feiock v. Feiock*, 485 U.S. 624, 632 (1988). The court should determine the amount of the sanction only after considering "the character and magnitude of the harm threatened by continued contumacy," "the probable effectiveness of any suggested sanction in bringing about the result desired," and "the amount of [the contemnor's] financial resources and the consequent seriousness of the burden" to that particular party. *United Mine Workers*, 330 U.S. at 304. In this case, the district court imposed a fine of $500 for each day that Dr. Chaganti failed to sign the settlement documents. Although the daily nature of the sanction suggests that it may have been designed to coerce compliance, *see Int'l Union v. Bagwell*, 512 U.S. 821, 829 (1994), the court's order is not clear that coercion was the sole purpose of the

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[2] Even if the terms of the settlement had been uncertain, moreover, C&A had an obligation to seek clarification of the court's order. "[A] party to an action is not permitted to maintain a studied ignorance of the terms of a decree in order to postpone compliance and preclude a finding of contempt." *Perfect Fit Indus., Inc. v. Acme Quilting Co., Inc.*, 646 F.2d 800, 808 (2d Cir. 1981). If the court's order was vague, then C&A should have requested additional guidance from the court. By failing to do anything, C&A violated the order.

sanction. Appellees assert, to the contrary, that the sanction is "remedial in nature" and payable to them, rather than to the court. (Resp. Opp. to Pet. for Writ of Mandamus, at 12). Nor does the court's order explain whether it considered the factors that bear on the appropriate amount for a sanction, *see United Mine Workers*, 330 U.S. at 304, or how the court arrived at the sum of $500 per day. On remand, therefore, if C&A does not promptly comply with the court's order to effectuate the settlement, the court should specify whether the monetary sanctions are compensatory or coercive in nature, and explain the basis for whatever amount is ordered. *See In re Chase & Sanborn Corp.*, 872 F.2d 397, 401 (11th Cir. 1989).

V.

C&A raises several other issues, namely, that the district court erred in dismissing its state antitrust claims, in denying its motion to amend its petition, and in quashing its subpoenas. Because we uphold the district court's order enforcing settlement of all claims, these issues are moot. We reject C&A's request that the case be reassigned to a different judge on remand, as nothing in the record supports the assertion that the district court's impartiality may reasonably be questioned. We also deny C&A's motion to strike the brief of the appellees.

* * *

For these reasons, we deny the petition for writ of mandamus and affirm all orders of the district court, except for the order imposing sanctions for contempt of court, which is vacated. The case is remanded for further proceedings consistent with this opinion.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 05-1101, 05-2065 & 05-2075

Chaganti & Associates,
Appellant,

v.

Thomas Nowotny, et al.,
Appellees.

Appeal from the United States District Court for the
Eastern District of Missouri

Upon consideration of the petition for writ of mandamus and notice of appeal from the district court's April 14, 2005, contempt and sanction order, the district court order is hereby stayed pending further order of this court.

The appeals in 05-1101, 05-2075 and 05-2065 are hereby consolidated.

The clerk shall issue a revised briefing schedule.

August 23, 2005

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 05-1101EMSL

Chaganti & Associates,
Appellant,

v.

Thomas Nowotny, et al.,
Appellees.

Appeal from the United States District Court for the
Eastern District of Missouri

Having reviewed the parties' responses to the order to show cause, it is directed that this appeal should proceed.

The clerk is directed to prepare a briefing schedule.

March 1, 2005

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHAGANTI & ASSOCIATES, P.C.,
Plaintiff,
vs.
THOMAS NOWOTNY, et al.,
Defendants.

Case No. 4:03CV501 HEA

MEMORANDUM AND ORDER

This matter is before the Court on defendants' Motion to Enforce Settlement and for Award of Fees and Costs, [# 130] . Plaintiff has filed a written opposition to this motion. Pursuant to this Court's oral ruling at the hearing held on November 30, 2004, and for the reasons set forth during the hearing, the Motion to Enforce is granted; the motion for award of fees and costs is denied.

Accordingly,

IT IS HEREBY ORDERED that plaintiff shall execute the required documents necessary to effectuate the parties' settlement of this matter within ten (10) days from the date of this order. Failure to comply with this order may result in the imposition of sanctions.

IT IS FURTHER ORDERED that upon the expiration of the prescribed time period, defendant shall file, within five (5) days thereof, the necessary pleadings required for dismissal with prejudice of this matter.

Dated this 1st day of December, 2004.

-/s/-
HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHAGANTI & ASSOCIATES, P.C.,
Plaintiff,

vs.

THOMAS NOWOTNY and
ROGER VARDELEON,
Defendants.

Case No. 4:03CV501 HEA

ORDER

This matter is before the Court on defendants' Motion for Contempt and/or for Sanctions, [# 144], filed on December 14, and defendants' Second Motion for Contempt and/or for Sanctions, [154]. The Court held a hearing on these motions on April 11, 2005. For the reasons set forth below, the motions are granted as set forth herein.

On December 1, 2004, this Court entered a Memorandum and Order following the Court's finding that the parties had agreed to settle this matter.

Plaintiff was ordered to execute the documents necessary to effectuate the settlement. As of this date, plaintiff has failed to do so.

Although plaintiff has filed an appeal from the Court's Order, the Motion to Stay filed by plaintiff was denied by the Court. Thus, plaintiff was required by the Court's Order to execute the required documentation, and was admonished that failure to do so may result in the imposition of sanctions. Plaintiff's failure to execute the documents is in direct contravention of this Court's Order and is therefore a contempt of this Court. *See, Fisher v. Marubeni Cotton Corp*, 526 F.2d 1338, 1341 n. 2 (8th Cir. 1975); *Chicago Truck Drivers Union Pension Fund v.*

Brotherhood Labor Leasing, 207 F.3d 500, 505 (8th Cir. 2000); *Rudd, et al. v. Owens, et al.*, Cause Number 2:02CV1599 SNL, Order dated July 30, 2004.

In addition to monetary sanctions for the contempt, defendants ask this Court to enjoin plaintiff, its principal and its lawyer from pursuing an EEOC claim that has been instituted against the parties involved herein and third parties that are not a part of this suit, but are involved in the circumstances of this case. The Court does not agree with defendants that by virtue of the Order requiring plaintiff to execute the documents, the Court should also enjoin the parties from actions which defendants believe violate the settlement agreement. Defendants may be able to successfully argue, as a defense to any claims filed against them, that these claims have been released by virtue of the settlement. The fact that plaintiff has failed to execute the documents, however, does not empower the Court to enjoin plaintiff's subsequent actions, rather, the Court may only look to plaintiff's actions *vis a vis* what plaintiff was required to do as articulated in the December 1, 2004 Memorandum and Order, *i.e.* to execute the required documents. Whether plaintiff has subsequently breached the settlement agreement is a separate issue and one that is not presented to the Court through plaintiff's failure to execute the release. The question of whether there has been a breach of the parties' settlement will not be addressed by the Court through a motion for contempt.

Defendants also ask the Court to impose sanctions and find plaintiff in contempt for disclosing information allegedly learned at the Eighth Circuit Court of Appeals sponsored mediation. Because the underlying information was obtained during the proceedings in a Court other than before the undersigned, this Court believes it would be inappropriate to address the issues as they relate to that mediation, even though the alleged disclosure of the

information occurred in the matters before this Court. Accordingly,

IT IS HEREBY ORDERED that defendants' Motion for Contempt and/or for Sanctions, [# 144] and defendants' Second Motion for Contempt and/or for Sanctions, [# 154] are granted, as provided herein.

IT IS FURTHER ORDERED that plaintiff shall be sanctioned with a monetary fine of $500.00 per day, from the date of this Order until such date and time it complies with this Court's December 1, 2004 Memorandum and Order.

Dated this 14th day of April, 2005.

-/s/-

HENRY EDWARD AUTREY

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHAGANTI & ASSOCIATES, P.C.,
Plaintiff,
vs.
THOMAS NOWATNY, et al.,
Defendants.

Case No. 4:03CV501 HEA

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's motion to remand. Defendant has filed written oppositions to this motion. For the reasons set forth below, the motion is denied.

Facts and Background

Plaintiff file this action in the Circuit Court in the City of St. Louis, Missouri on February 21, 2003. Plaintiff's petition is styled "Petition for Interference in Business Advantage; Conspiracy to Injure a Business; Unlawful Restraint of Trade."

Defendants were served with the petition on February 28, 2003. The petition also alleged that defendants were residents of or conducted business in the City of St. Louis. Defendants filed a motion to transfer venue to the Circuit Court for the St. Louis County, since they live and work in St. Louis County.

On April 4, 2003, plaintiff filed a reply to defendants' motion to transfer venue. In this reply, plaintiff states that it brought this action alleging that defendants violated antitrust laws of the United States. Defendants removed this action on April 18, 2003 based on federal question jurisdiction.

Discussion

Section 1446(b) of Title 28 provides that if a case as stated in the initial pleadings is not removable, the notice of removal may be filed within thirty days of the filing of a motion or other paper from which it may be ascertained that the case is one which is or has become removable.

Plaintiff argues in its motion to remand that if this case was removable at all, it was removable when it was first served. In support of this position, plaintiff urges that the title, "Unlawful Restraint of Trade," "[a]bsent clear indication that it is solely based on Missouri law" provides no reason for defendants to construe the petition as containing only state claims. This position is clearly inapposite to determining whether the petition stated a federal cause of action from its filing such that it was removable at that time.

Federal district courts are courts of limited jurisdiction, and the presumption is that they lacked jurisdiction unless and until plaintiff pleads sufficient facts to establish it." *Celli v. Shoell*, 40 F.3d 3234 (10th Cir. 1994). In determining whether a matter is removable, a defendant must be able to clearly ascertain that plaintiff is bringing an action under federal law. The complaint must explicitly disclose the federal question in order for the thirty day time limit to begin to run. See, *In re Willis*, 228 F.3d 896 (8th Cir. 2000)(per curiam); *Akin v. Ashland Chemical Co.*, 156 F.3d 1030, 1035 (10th Cir. 1998)[1].

Plaintiff's petition does not clearly and explicitly disclose that plaintiffs are seeking recovery under federal

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[1] This Court is unpersuaded by plaintiff's attempt to distinguish diversity jurisdiction and federal question jurisdiction when analyzing the time for removal. Section 1446(b) makes no such distinction and none should be made. The issue is the time the case becomes removable be it in diversity cases or federal question cases.

laws. As such, the matter was not removable until defendants were made aware, through plaintiff's reply to the motion to transfer venue filed on April 4, 2003, that plaintiff was seeking recovery under the federal antitrust laws. Thus, removal on April 18, 2003 was made within thirty days from this disclosure and was therefore timely.

Accordingly,

IT IS HEREBY ORDERED THAT Plaintiff's Motion to Remand, [#12] is denied.

Dated this 14th day of July, 2003.

-/s/-
HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 05-1101
Chaganti & Associates, P.C.,
Appellant
v.
Thomas Nowotny and Roger V. Vardeleon,
Appellees

No: 05-2065
In re: Chaganti & Associates, P.C.,
Petitioner

No: 05-2075
Chaganti & Associates, P.C.,
Appellant
v.
Thomas Nowotny and Roger V. Vardeleon,
Appellees

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:03-cv-00501-HEA)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

January 16, 2007

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans